Supreme Court, U.S.
FILED
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No. 99-1240

IN THE
Supreme Court of the United States

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA AND THE ALABAMA DEPARTMENT OF YOUTH SERVICES,

Petitioners,

v.

PATRICIA GARRETT AND MILTON ASH,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

JOINT APPENDIX

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Petition for Certiorari Filed January 24, 2000
Certiorari Granted April 17, 2000

47pp

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

I. *Ash v. Alabama Department of Youth Services*, United States District Court for the Northern District of Alabama, Southern District, No. CV-97-AR-2179-S

1. 8/22/97 COMPLAINT filed

2. 10/23/97 ANSWER by Alabama Department of Youth Services filed

3. 10/23/97 MOTION (12(b)(6)) by Alabama Department of Youth Services to dismiss filed

4. 11/14/97 ORDER, that defendant Alabama Department of Youth Services' 12(b)(6) motion is converted to a Rule 56 motion filed

5. 12/2/97 MOTION by Alabama Department of Youth Services for summary judgment filed

6. 12/22/97 MOTION by plaintiff Rule 56(f) motion to extend discovery with affidavit of Sandra B. Reiss attached filed

7. 12/22/97 OPPOSITION (Response in) by plaintiff to motion for summary judgment with affidavit of Milton Ash and exhibits attached (1-36) filed

8. 1/6/98 MOTION by Alabama Department of Youth Services to strike affidavit of plaintiff Ash filed

9. 1/13/98 MEMORANDUM opinion filed

10. 1/13/98 ORDER granting defendant's motion for summary judgment to dismiss case with prejudice in conformity with accompanying memorandum opinion the court EXPRESSLY DETERMINES that there exists no genuine issue of material fact and defendant is entitled to judgment as a matter of law; all pending motions are moot; costs taxed against plaintiff filed

11. 1/20/98 NOTICE of appeal by Milton Ash from District Court decision entered 1/13/98; notice of appeal, order appealed from and court copy of docket entries mailed

II. *Garrett v. The Board of Trustees of The University of Alabama in Birmingham*, United States District Court for the Northern District of Alabama, Southern District, No. CV-97-AR-0092-S

1. 1/14/97 COMPLAINT filed

2. 3/14/97 MOTION by UAB Bd of Trustees to dismiss filed

3. 3/14/97 ANSWER by defendant filed

4. 3/25/97 OPPOSITION by plaintiff to defendant's motion to dismiss filed

5. 3/28/97 ORDER granting motion to dismiss as it seeks punitive damages is DISMISSED w/prejudice as set out in this order filed

6. 8/5/97 MOTION by Patricia Garrett to amend complaint filed

7. 8/7/97 18-ORDER granting plaintiff's motion to amend complaint entered

8. 8/7/97 AMENDED complaint filed, by Patricia Garrett; jury demand filed

9. 10/1/97 WITNESS list (expert report) by Patricia Garrett filed

10. 10/2/97 MOTION by UAB Bd of Trustees for partial summary judgment filed

11. 10/6/97 MOTION by UAB Bd of Trustees to exclude expert testimony of Dr. Ted Gansler filed

12. 10/10/97 RESPONSE by Patricia Garrett in opposition to defendant's motion to exclude expert testimony of Dr. Gansler

13. 10/27/97 OPPOSITION by Patricia Garrett to defendant's motion for partial summary judgment filed

14. 11/4/97 MEMORANDUM opinion filed

15. 11/6/97 Report and Recommendation filed regarding motion to exclude expert testimony of Dr. Ted Gansler

16. 11/7/97 ORDER adopting Report and Recommendation of magistrate judge entered 11/6/97 filed

17. 12/9/97 MOTION by UAB Bd of Trustees to amend motion for partial summary judgment filed

18. 12/10/97 ORDER granting defendant's motion to amend motion for partial summary judgment; the court DEEMS defendant's said motion for partial summary judgment as one for complete summary judgment

19. 12/23/97 MOTION by Patricia Garrett to extend discovery filed

20. 12/23/97 OPPOSITION by Patricia Garrett to defendant's motion to amend motion for partial summary judgment filed

21. 12/23/97 DEPOSITION of Patricia Garrett filed

22. 1/5/98 MOTION by UAB Bd of Trustees to strike affidavit of Patricia Garrett filed

23. 1/5/98 RESPONSE by UAB Bd of Trustees to plaintiff's Rule 56(f) motion filed

24. 1/13/98 MEMORANDUM opinion filed

25. 1/13/98 ORDER to dismiss case with prejudice in conformity with accompanying memorandum opinion the court EXPRESSLY DETERMINES that there exists no genuine issue of material fact and that defendant is entitled to judgment as a matter of law; defendant's motion for summary judgment is GRANTED; all other pending motions

		are MOOT; costs taxed against plaintiff filed
26.	1/20/98	NOTICE of appeal by Patricia Garrett from District Court decision entered 1/13/98; notice of appeal, order appealed from and court copy of docket entries mailed

[Filed Aug. 22, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MILTON ASH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**[CV-97-AR-2179-S]**
ALABAMA DEPARTMENT OF YOUTH SERVICES	)	
	)	
	)	
Defendant.	)	

COMPLAINT

I. INTRODUCTION

This is an action alleging disability discrimination in violation of Titles I, II and IV of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12111 et seq., 12131 et seq., and 12203 et seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. Mr. Milton Ash is a qualified individual with a disability who has been denied accommodations and equal opportunities, benefits and services in his employment and suffered retaliation in response to his requests for accommodations. Plaintiff is entitled to both equitable relief and damages.

II. JURISDICTION

1. This Court has jurisdiction in accordance with 28 U.S.C. § 1331, 28 U.S.C. § 2201, 2202, 29 U.S.C. § 794a, 42 U.S.C. § 12117, and 42 U.S.C. § 12133. Venue is proper pursuant to 28 U.S.C. § 1391.

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. § 12117. Plaintiff timely filed his charge of discrimination within 180 days of the occurrence of the last discriminatory act. Plaintiff also timely filed this Complaint within ninety (90) days of the receipt of a Notice of Right to Sue issued by the EEOC. Title II of the ADA as well as Section 504 of the Rehabilitation Act do not require administrative exhaustion.

III. PARTIES

3. Plaintiff, Milton Ash, is a male citizen of the United States and a resident of the State of Alabama. Mr. Ash is a person with a disability in that he has severe chronic asthma, sleep apnea, obstructive pulmonary disease and diabetes. He currently uses inhalers several times a day and is on a respirator and mask, when necessary. His medications include insulin, Theodur and Prednisone for his respiratory problems. His asthma is severe, chronic and persistent. Plaintiff's conditions substantially limit his ability to, inter alia, sleep, breathe, care for himself and work. Consequently, Plaintiff is a person with a disability in that he has physical impairments which substantially limits one or more of his major life activities. Plaintiff is also perceived as having a disability which substantially limits his ability to work and has a history of having such disabilities. 42 U.S.C. § 12102, 42 U.S.C. § 12131, 29 U.S.C. § 706.

4. Defendant, Alabama Department of Youth Services (hereinafter "DYS"), is an employer pursuant to 42 U.S.C. § 12111(5) and 29 U.S.C. § 2611, and is a public entity in accordance with 42 U.S.C. § 12131. Upon information and belief, Defendant is also a recipient of federal financial assistance.

IV. FACTUAL ALLEGATIONS

5. The Defendant has intentionally, and with malice or reckless indifference, discriminated, on the basis of Plaintiff's

disability, against Plaintiff with respect compensation, job assignments, and other terms, conditions and privileges of employment.

6. Mr. Milton Ash began working as a Security Officer for Defendant in 1993. He immediately informed his employer of his respiratory disabilities and further informed Defendant of his doctor's recommendation that he should not be exposed to carbon monoxide or other noxious fumes, such as cigarette smoke. Specifically, Mr. Ash asked that the vehicles he drove at work be repaired so as not to emit noxious fumes and further requested in writing and by oral request that Defendants enforce the no-smoking policy.

7. Despite Mr. Ash's request for accommodation, Defendants have forced Mr. Ash, as part of his job duties, to drive cars which emit carbon monoxide and other noxious fumes into the passenger compartment. In March 1996, Mr. Ash supplied Defendants with a note from his doctor requesting, once again, that he not be exposed to carbon monoxide or other noxious fumes, as such exposure would exasperate his respiratory problems. Mr. Ash has made repeated requests that Defendants repair these cars. However, Defendants failed to repair the cars and further failed to accommodate Mr. Ash by refusing to change his job duties.

8. Furthermore, Plaintiff has consistently complained to his supervisors that he was exposed to cigarette smoke while at work. Mr. Ash notified his supervisors that such exposure was exasperating his respiratory condition and requested that Defendants enforce the no-smoking policy, specifically in the Gatehouse on the VACCA Campus. However, Defendants took no steps to enforce the no-smoking policy, and continued to allow employees to smoke in the Gatehouse and other areas of Defendants' facility, thus exposing Mr. Ash to dangerous smoke. As such, Mr. Ash's respiratory illness worsened.

9. In July 1996, Mr. Ash was diagnosed with sleep apnea and it was recommended that Plaintiff work daytime shifts to accommodate that condition. Mr. Ash immediately communicated this recommendation to Defendants and requested that he be permitted to work the first shift. Deleon Fancher, Mr. Ash's direct supervisor, informed Plaintiff that he would be transferred to the first shift as soon as Defendants were able to hire two new security police officers. Again, in a letter dated October 16, 1996, Plaintiff's doctor requested that Mr. Ash's schedule be changed to accommodate his disability.

10. Subsequently, Mr. Ash filed a charge of discrimination with the EEOC on July 7, 1996 alleging discrimination on the basis of his disability under the Americans with Disabilities Act for Defendants' failure to accommodate his respiratory disability.

11. After Plaintiff filed his charge of discrimination with the EEOC, Defendants hired two new security officers. However, Defendants refused to transfer Plaintiff to the first shift as promised. Instead, the two new officers were placed on first shift. Other officers without disabilities within DSY were granted their requests to transfer to the first shift during this time period.

12. On September 27, 1996 Plaintiff received a performance evaluation. Although Plaintiff's supervisor was Deleon Fancher, the evaluation was graded by Tom Foster, the business manager, an individual who was not Plaintiff's supervisor and did not work have direct knowledge of his job performance. The evaluation scored Mr. Ash at the "meets standards" category rather than the "exceeds standards" category in which he had previously been scored before filing his charge with the EEOC. Mr. Ash was the only employee in his job category who was evaluated by Mr. Foster rather than Mr. Fancher. Mr. Ash had never received a score of "meets standards" prior to this evaluation, as all of his evaluations were "exceeds standards."

13. On January 28, 1997 Plaintiff filed another charge of discrimination with the EEOC alleging retaliation for asserting his rights under the Americans with Disabilities Act. Specifically, Plaintiff claimed that Defendants retaliated against him for filing his original EEOC charge by refusing to grant his accommodation request for first shift and by lowering his evaluation score.

14. As a result of Defendants' actions, Mr. Ash has suffered extreme harm, including, but not limited to loss of employment opportunities, compensation, and other benefits of employment, deteriorated health, and has suffered pain, humiliation, mental anguish and suffering, and loss of enjoyment of life.

IV. CAUSES OF ACTION — THE AMERICANS WITH DISABILITIES ACT, TITLES I AND II, RETALIATION, THE REHABILITATION ACT OF 1973, SECTION 504

15. Plaintiff realleges and incorporates by reference paragraphs 1 through 11 above with the same force and effect as if fully set out in specific detail hereinbelow.

16. As stated, Plaintiff is a person with a disability, has a history of disability and is perceived as disabled pursuant to 42 U.S.C. § 12102, 29 U.S.C. § 706 and 42 U.S.C. § 12131. Defendant is an employer in accordance with 42 U.S.C. § 12111(5), is a public entity in accordance with 42 U.S.C. § 12131 and, upon information and belief, receives federal financial assistance.

17. Despite Plaintiff's disability, with or without reasonable accommodation, he is able to perform the essential functions of his position as a Security Officer at Alabama Department of Youth Services. Plaintiff meets the definition of a "qualified individual with a disability" pursuant to 42 U.S.C. § 12112, 29 U.S.C. § 794 and 42 U.S.C. § 12132.

18. Defendant has limited, classified, and segregated Plaintiff in a way that adversely affects his job opportunities because of his disability.

19. Further, Defendants have utilized standards or methods of administration that discriminate against Plaintiff on the basis of his disability, and have excluded or otherwise denied Plaintiff equal benefits of his employment because of his disability.

20. Defendants have also failed to accommodate Plaintiff, including, but not limited to, refusing to repair the exhaust leaks in the automobiles, refusing to enforce the no-smoking policy, and refusing to allow him to transfer to the first shift.

21. Defendants retaliated against Mr. Ash by taking adverse employment action against him because he attempted to assert his rights under the Americans with Disabilities Act.

22. Accommodating Mr. Ash by providing an environment free of noxious fumes and moving him to the first shift would not have caused substantial or grievous economic injury to the operations of the Defendant.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the Defendant, including the action taken against Plaintiff by Defendants are violative of Plaintiff's rights as secured by the Americans with Disabilities Act, Title I, II, and IV, 42 U.S.C. § 12101, et seq., and the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794.

2. Grant Plaintiff a permanent injunction enjoining the Defendant, its agents, successors, employees, attorneys and

those acting in concert with the Defendant, and at the Defendant's request, from continuing to violate Plaintiff's rights as well as others who are similarly-situated pursuant to the Americans with Disabilities Act, Titles I, II and IV, and the Rehabilitation Act of 1973, Section 504.

3. Issue a permanent injunction Ordering Defendant to repair the automobiles in its possession that emit carbon-monoxide fumes into the passenger compartments of said vehicles.

4. Issue a permanent injunction Ordering Defendants to enforce its no smoking policy throughout Defendant's place of business.

5. Enter an Order awarding Plaintiff damages including back pay, front pay, nominal, compensatory and punitive damages.

6. Award Plaintiff reasonable costs, attorneys' fees and expenses.

7. Award such other relief and benefits as the cause of justice may require.

Respectfully submitted,

/s/ Kirsten H. Kowalski
Deborah A. Mattison
Kirsten Hunt Kowalski
Sandra B. Reiss
Attorneys for Milton Ash

OF COUNSEL:
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PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY.

/s/ Kirsten H. Kowalski
OF COUNSEL

DEFENDANT'S ADDRESS:

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8950 Roebuck Boulevard
Birmingham, Alabama 35205

[Filed Oct. 23, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MILTON ASH,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
vs.	)	**NUMBER:**
	)	**CV-97-AR-2179-S**
ALABAMA DEPARTMENT	)	
OF YOUTH SERVICES	)	
	)	
Defendant.	)	

ANSWER

Comes now the defendant in the above-styled case, and answers plaintiff's complaint as follows:

A. ANSWER TO ALLEGATIONS OF THE COMPLAINT

Defendant answers the allegations of the complaint in numerical order therein set forth as follows:

I. INTRODUCTION

It is correct that the complaint alleges the violations of Titles I, II, and IV of the Americans with Disabilities ACT (ADA), 42 U.S.C. Section 12111 et. seq. and 12203 et. seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C., Section 794 et. seq. It is also correct that plaintiff specifically alleges that the defendant discriminated against him based on his disabilities and that he suffered retaliation in response to his request for accommodations for his disabilities. It is also

correct that plaintiff seeks both equitable relief and damages. Defendant denies however, that plaintiff is entitled to judgment or to damages or to any relief under any such authority or on any allegation of the complaint.

II. JURISDICTION

1. A. It is correct that this Court has jurisdiction of this matter and pursuant to 28 U.S.C. Section 1331.

   B. 28 U.S.C. Section 2201 is not a jurisdictional statute and does not confer jurisdiction on this Court.

   C. 28 U.S.C. Section 2202 is not a jurisdictional statute and does not confer jurisdiction on this Court.

   D. 29 U.S.C. Section 794(a) is not a jurisdictional statute and does not confer jurisdiction on this Court.

   E. 42 U.S.C. Section 12117 is not a jurisdictional statute and does not confer jurisdiction on this Court.

   F. 42 U.S.C. Section 12133 is not a jurisdictional statute and does not confer jurisdiction on this Court.

   G. Defendant does not contest venue.

2. The allegations of paragraph two are denied.

III. PARTIES

3. Defendant admits that Milton Ash is a male citizen of the United States and a resident of the State of Alabama, but deny all other allegations of paragraph three.

4. Defendant admits that the Alabama Department of Youth Services is an employer pursuant to 42 U.S.C. Section 12111(5) and 29 U.S.C. Section 2611, and is a public entity in accordance with 42 U.S.C. Section 12131.

IV. FACTUAL ALLEGATIONS

5. The allegations of paragraph five are denied.

6. The allegation of the first sentence of paragraph six is admitted. All other allegations of paragraph six are denied.

7. The allegations of paragraph seven are denied.

8. The allegations of paragraph eight are denied.

9. The allegations of paragraph nine are denied.

10. The defendant admits that plaintiff filed a charge of discrimination with EEOC on the basis of his alleged disability under the ADA.

11. Defendant is without sufficient information to form a belief as to the truth of the allegations contained therein, and thus denies the same.

12. Defendant is without sufficient information to form a belief as to the truth of the allegations contained therein, and thus denies the same.

13. Defendant admits that on January 28, 1997, plaintiff filed a charge of discrimination with the EEOC alleging retaliation for asserting his rights under the ADA Act.

14. The allegations of paragraph fourteen are denied.

IV. CAUSES OF ACTION - THE AMERICANS WITH DISABILITIES ACT, TITLES I AND II, RETALIATION, THE REHABILITATION ACT OF 1973, SECTION 504.

15. In response to paragraph fifteen of the complaint, the defendant adopts, re-avers, and incorporates herein by reference each and all of its responses to paragraph one through fourteen of the complaint.

16. The allegations of paragraph sixteen are denied.

17. The allegations of paragraph seventeen are denied.

18. The allegations of paragraph eighteen are denied.

19. The allegations of paragraph nineteen are denied.

20. The allegations of paragraph twenty are denied.

21. The allegations of paragraph twenty one are denied.

22. The allegations of paragraph twenty two are denied.

VI. PRAYER FOR RELIEF

1. Defendant denies that plaintiff is entitled to any declaratory or injunctive relief, or damages or to any relief under the Americans with Disabilities Act, Title I. and II., Retaliation, The Rehabilitation Act of 1973, Section 504.

AS TO ALL COUNTS

2. Defendant denies that plaintiff is entitled to attorneys' fees or costs or any other equitable or legal relief.

B. ADDITIONAL ANSWER TO THE COMPLAINT

For further answer to the complaint, defendant says as follows, separately and severally:

FIRST AFFIMATIVE DEFENSE

The complaint is not maintainable under Title I and II of the ADA unless and until the plaintiff establishes satisfaction of the prerequisites to the institution and maintenance of an action under each such statutes as to the defendant.

SECOND AFFIRMATIVE DEFENSE

The complaint is not maintainable under Title I and II of the ADA with respect to any event or alleged event occurring more than 180 days prior to the filing of the Equal Employment Opportunity Commission charge or charges on which the complaint is based.

THIRD AFFIRMATIVE DEFENSE

Any and all claims and allegations not asserted by and encompassed within a timely filed EEOC charge by the plaintiff are not maintainable under Title I and II or the ADA.

FOURTH AFFIRMATIVE DEFENSE

The plaintiff has failed to exhaust his administrative remedies under Title I and II of the ADA.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to damages under Section 102(b)(5) of the ADA because defendant has demonstrated the required good faith efforts to reasonably accommodate the plaintiff's alleged disability.

SIXTH AFFIRMATIVE DEFENSE

Any and all actions taken by defendant with regard to plaintiff were taken pursuant to legitimate non-discriminatory reasons.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages against defendants.

EIGHTH AFFIRMATIVE DEFENSE

The requirement of working on all shifts is a bona fide occupational qualification.

NINTH AFFIRMATIVE DEFENSE

The challenged action described in plaintiff's complaint would have been taken by defendant, even in the absence of any alleged discriminatory intent.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief can be granted.

ELEVENTH AFFIRMATIVE DEFENSE

All requirements and qualifications for the job classification held by plaintiff are job related and consistent with business necessity.

TWELTH AFFIRMATIVE DEFENSE

The plaintiff is not a qualified individual under the ADA.

THIRTEENTH AFFIRMATIVE DEFENSE

The plaintiff cannot be accommodated under the ADA.

FOURTEENTH AFFIRMATIVE DEFENSE

The plaintiff is not an individual with a disability as defined under the ADA.

This answer is respectfully submitted this the 22nd day of October, 1997.

/s/ William J. Samford, II
William J. Samford, II
General Counsel

OF COUNSEL:
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[Filed Jan. 14, 1997]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

PATRICIA GARRETT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION**
	)	**NUMBER:**
THE BOARD OF TRUSTEES	)	**[CV-97-AR-0092-S]**
OF THE UNIVERSITY OF	)	
ALABAMA IN BIRMING-	)	
HAM,	)	
Defendant.	)	

COMPLAINT

I. INTRODUCTION

This complaint alleges violations of the Americans with Disabilities Act ("ADA"), Titles I and II, the Rehabilitation Act of 1973, Section 504, and the Family Medical Leave Act ("FMLA"). Plaintiff alleges that Defendant discriminated against her based on her disability and in failing to restore her to her prior position or to a similar position upon her return to work from family medical leave. This action seeks both equitable relief and damages.

II. JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201 and 2202, 42 U.S.C. § 2000e *et seq.*, 29 U.S.C. § 794 *et seq.*, 42 U.S.C. § 12117, 42 U.S.C. §§ 12133, and 29 U.S.C. § 2617. Venue is proper pursuant to 28 U.S.C. § 1391.

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. § 12117 and Title VII of the "Civil Rights Act of 1964", as amended, 42 U.S.C. § 2000e *et seq.*, and as amended by the "Civil Rights Act of 1991", 42 U.S.C. § 1981a. Plaintiff timely filed her charge of discrimination within 180 days of occurrence of the last discriminatory act. Plaintiff also timely filed this Complaint within ninety (90) days of the receipt of a Notice of Right to Sue issued by the EEOC and the Department of Justice. Title II of the ADA as well as Section 504 of the Rehabilitation Act and the Family Medical Leave Act do not require administrative exhaustion.

III. PARTIES

3. Plaintiff, Patricia Garrett, is a female citizen of the United States and a resident of the State of Alabama. On August 27, 1994, Ms. Garrett was diagnosed with breast cancer. Within the week, Ms. Garrett began treatment for the disease, undergoing a lumpectomy followed by radiation and chemotherapy which lasted through June 1995. Plaintiff's condition substantially limits her ability to, *inter alia*, sleep, care for herself and work. Consequently, Plaintiff is a person with a disability in that she has a physical impairment which substantially limits one or more of her major life activities. Plaintiff is also perceived as having a disability which substantially limits her ability to work and has a history of such disability. 42 U.S.C. § 12102, 42 U.S.C. § 12131, 29 U.S.C. § 706. Ms. Garrett has a serious health condition and has been employed with defendant for at least twelve months and had requested authorized leave in compliance with the certification requirements of her employer. Consequently, she is an eligible employee, as defined by the Family Medical Leave Act.

4. Defendant, The Board of Trustees of the University of Alabama in Birmingham (hereinafter "UAB Hospital") is an employer pursuant to 42 U.S.C. § 12111(5) and 29 U.S.C. § 2611, and is a public entity in accordance with 42 U.S.C.

§ 12131. Defendant is also a recipient of federal financial assistance.

IV. FACTUAL ALLEGATIONS

5. The Defendant has intentionally, and with malice or reckless indifference discriminated, on the basis of Plaintiff's disability, against Plaintiff with respect to discharge, medical leave, compensation, job assignments, and other terms, conditions and privileges of employment.

6. Ms. Garrett was hired by defendant in 1977 as a Registered Nurse. In 1986, Ms. Garrett began working in the emergency room while working on her Masters in Nursing. As a result of her advanced education and good job performance, Ms. Garrett began to receive administrative promotions, and in June 1992, Ms. Garrett was awarded the position of Director of OB/Gyn/Neonatal Services which included managing Cooper Green's Perinatal Division.

7. On September 5, 1994, Ms. Garrett was diagnosed with breast cancer. Within a week Ms. Garrett underwent a lumpectomy and in October 1994 began radiation treatment, followed by chemotherapy in January 1995.

8. During the radiation treatment for her disability, Ms. Garrett preferred to work full-time and retain all her normal duties. She communicated this preference verbally and in writing to her supervisor, Sabrina Shannon. However, throughout the fall of 1994, Ms. Shannon, consistently encouraged Ms. Garrett to take leave due to plaintiff's medical condition, and Ms. Garrett became fearful about her job security as she had heard that Ms. Shannon tended to get rid of employees with "flaws". In fact, on the agenda memo dated January 5, 1995, Ms. Garrett's position was listed as "being recruited"; however, she was later told by Ms. Shannon that this was a typographical error.

9. In January 1995, Ms. Garrett began undergoing chemotherapy. During this time, Ms. Garrett applied for intermittent leave under the FMLA. Also during the winter of 1994/1995, Ms. Shannon repeatedly threatened to transfer to Ms. Garrett to a less demanding position due to plaintiff's medical condition, despite Ms. Garrett's verbal and written statements that she was able to perform her position with or without reasonable accommodation.

10. In March 1995, after a number of negative comments regarding her illness by Ms. Shannon and the affects these comments and her illness had on her, Ms. Garrett took the Family Medical Leave offered by defendant for the remainder of her chemotherapy. Ms. Garrett took Family Medical Leave from approximately March 1, 1995 - July 10, 1995, the four months guaranteed by defendant's employee handbook and Family Medical Leave materials.

11. Upon her return from Family Medical Leave, Ms. Garrett met with Ms. Shannon and Anne Ward from UAB personnel. At that meeting, it was decided that Ms. Garrett would continue in her position as Director of OB/Gyn/Neonatal Services. However, approximately a week later, Ms. Shannon told Ms. Garrett that she would either have to quit or transfer to another position, despite that there were no other comparable positions in status or pay or else.

12. Facing termination, Ms. Garrett was forced to apply for a transfer although she desired to retain her prior position. Ms. Garrett was ultimately transferred to the position of Nurse Manager at the Mary Lewis Convalescence Home, a position which was a lower position and approximately a $13,000.00 decrease in salary.

13. As a result of Defendant's action, Ms. Garrett has suffered extreme harm, including, but not limited to, loss of employment opportunities, denial of wages, compensation and other benefits and conditions of employment. Additionally, Ms.

Garrett has suffered injury including pain, humiliation, mental anguish and suffering, and loss of enjoyment of life.

IV. CAUSES OF ACTION - THE AMERICANS WITH DISABILITIES ACT, TITLES I AND II, RETALIATION, THE REHABILITATION ACT OF 1973, SECTION 504

14. Plaintiff realleges and incorporates by reference paragraphs 1 through 13 above with the same force and effect as if fully set out in specific detail hereinbelow.

15. As stated, Plaintiff is a person with a disability, has a history of disability and is perceived as disabled pursuant to 42 U.S.C. § 12102, 29 U.S.C. § 706 and 42 U.S.C. § 12131. Defendant is an employer in accordance with 42 U.S.C. § 12111(5), is a public entity in accordance with 42 U.S.C. § 12131 and receives federal financial assistance.

16. Despite Plaintiff's disability, with or without reasonable accommodation, she is able to perform the essential functions of her position as Director of OB/Gyn/Neonatal Services, as well as several other positions within UAB Hospital. Plaintiff meets the definition of "a qualified individual with a disability" pursuant to 42 U.S.C. § 12111(8), 29. U.S.C. § 794 and 42 U.S.C. § 12131.

17. Defendant, by its actions, has intentionally, maliciously and with reckless indifference discriminated against Ms. Garrett because of her disability with regard to her termination/demotion, employee compensation, benefits, and other terms and conditions of employment. 42 U.S.C. § 12112, 29 U.S.C. § 794 and 42 U.S.C. § 12132.

18. Defendant has limited and classified Ms. Garrett in a manner which adversely affects her opportunities, income and status because of her disability.

19. Furthermore, Defendant has failed to accommodate Ms. Garrett, including allowing her to return to work, work with

intermittent leave or transferring her to a comparable position in both salary and status.

20. Restoring Ms. Garrett to her former position or an equivalent job would not have caused substantial or grievous economic injury to the operations of the Defendant.

V. THE FAMILY MEDICAL LEAVE ACT

21. Plaintiff realleges and incorporates by reference paragraphs 1-20 above with the same force and effect as if fully set out in specific detail hereinbelow.

22. As stated, plaintiff is a person with a disability and serious health condition pursuant to 29 U.S.C. § 2611. Ms. Garrett had been employed with defendants for at least 12 months and requested authorized leave in compliance with 29 U.S.C. § 2613 and the certification requirements of her employer. Defendant is an employer in accordance with 42 U.S.C. § 2611.

23. Defendant violated the Family Medical Leave Act, 29 U.S.C. § 2614, *inter alia*, with regards to restoring plaintiff to the position she held before she requested authorized leave, or an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

24. Defendant intentionally, maliciously and with reckless indifference denied Ms. Garrett restoration to the position she occupied before she requested authorized leave under the Family Medical Leave Act.

25. Restoring Ms. Garrett to her former position or an equivalent job would not have caused substantial or grievous economic injury to the operations of the defendant.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant including the action taken against plaintiff by defendant are violative of Plaintiff's rights as secured by the Americans with Disabilities Act, Title I and II, 42 U.S.C. § 12101, *et seq*., the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 and the Family Medical Leave Act, 29 U.S.C. § 2611 *et seq*.

2. Grant Plaintiff a permanent injunction enjoining the Defendant, its agents, successors, employees, attorneys and those acting in concert with the Defendant, and at the Defendant's request, from continuing to violate Plaintiff's rights as well as others who are similarly-situated pursuant to the Americans with Disabilities Act, Titles I and II, the Rehabilitation Act of 1973, Section 504 and the Family Medical Leave Act, 29 U.S.C. § 2611 *et seq*.

3. Enter an Order awarding the Plaintiff damages including backpay, frontpay, nominal, liquidated, compensatory and punitive damages.

4. Award Plaintiff reasonable costs, attorney's fees and expenses.

5. Award such other relief and benefits as the cause of justice may require.

Respectfully submitted,

/s/ Sandra B. Reiss

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PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY.

/s/ Sandra B. Reiss

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[Filed Mar. 14, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

PATRICIA GARRETT,	)
	)
Plaintiff,	)
	)
vs.	)
CASE NO.	)
CV 97-AR-0092-S	
THE BOARD OF	)
TRUSTEES OF THE	)
UNIVERSITY OF	)
ALABAMA IN	)
BIRMINGHAM,	)
	)
Defendant.	)

ANSWER

COMES now the Board of Trustees of the University of Alabama ("Board"), for its division, The University of Alabama at Birmingham, and answers the plaintiff's complaint as follows:

FIRST DEFENSE

The Board responds to the several allegations of the plaintiff's complaint in the order they are alleged:

a. The Board admits jurisdiction and venue are proper in this court, but denies that there is any substantive basis for the claims presented in this case.

a. Admitted.

a. The Board admits the first two sentences of paragraph three. The Board has insufficient knowledge to either admit or deny the allegations of the third sentence. The allegations for the fourth, fifth and sixth sentences are denied. The last two sentences of paragraph three are admitted. The Board adds that the plaintiff has been granted any leave that she requested, under the Family Medical Leave Act ("FMLA") or otherwise.

a. Admitted.

a. Denied.

a. Admitted with the exception that the correct title of plaintiff's position was Director of Nursing, OB/GYN/Neonatal Services.

a. Upon information and belief, the Board admits that the plaintiff was diagnosed with breast cancer in or around the first part of September, 1994. However, the Board has insufficient knowledge to either admit or deny the remaining allegations of paragraph seven.

a. Denied.

a. The Board admits the first two sentences of paragraph nine, and adds that plaintiff was granted all leave that she requested, even without significant advance notice, for purposes of her chemotherapy and/or radiation treatments. The remaining allegations of paragraph nine are denied.

a. The first sentence of paragraph ten is denied. The second sentence of paragraph ten is admitted.

a. The first two sentences of paragraph eleven are admitted. The remaining allegations of paragraph eleven are denied.

a. The first sentence of paragraph twelve is denied. In response to the second sentence of this paragraph, the Board

states that plaintiff applied for a transfer to the stated position, and said transfer was not suggested to or forced upon the plaintiff by any employee of the Board or any of her supervisors.

a. Denied.

a. The Board realleges and incorporates by reference its response to paragraphs 1-13 above as if fully set forth herein.

a. The first sentence of paragraph fifteen is denied. The second sentence of paragraph fifteen is admitted.

a. The first sentence of paragraph sixteen is admitted, with the exception that the Board avers that plaintiff is not disabled as that term is defined within the Americans with Disabilities Act and the other statutes cited in plaintiff's complaint. The second sentence of paragraph sixteen is denied.

a. Denied.

a. Denied.

a. Denied. The Board adds that the plaintiff has never requested any accommodation from the defendant.

a. The Board admits the allegations of paragraph twenty but adds that the plaintiff has never requested that she be returned to her former position.

a. The Board realleges and incorporates by reference herein its responses to paragraphs 1-20 above, as if fully set forth herein.

a. The first sentence of paragraph twenty-two is denied. The second and third sentences of paragraph twenty-two are admitted.

a. Denied.

a. Denied.

a. The Board admits the allegations of paragraph twenty but adds that the plaintiff has never requested that she be returned to her former position.

In response to plaintiff's prayer for relief, the Board denies that the plaintiff is entitled to any of the relief requested.

SECOND DEFENSE

The plaintiff is not an individual with a disability, nor has she been regarded or perceived as an individual with a disability.

THIRD DEFENSE

The plaintiff voluntarily quit the position she held and applied for a transfer to another position, which transfer she was given by her employer. She has not suffered any adverse employment action against her by her employer.

FOURTH DEFENSE

After being granted leave as she requested under the Family Medical Leave Act, the plaintiff was returned to full duty in the same position she had held prior to taking the leave. This defendant has not violated the FMLA.

FIFTH DEFENSE

The plaintiff did not request any reasonable accommodation from her supervisor other than her FMLA leave, which was granted.

SIXTH DEFENSE

The plaintiff is not entitled to front pay.

SEVENTH DEFENSE

The plaintiff is not entitled to recover punitive damages against the Board.

EIGHTH DEFENSE

All actions taken by the defendant with regard to the plaintiff were based on legitimate, non-discriminatory reasons.

NINTH DEFENSE

To the extent that plaintiff purports to make a claim of unlawful retaliation under Title VII, defendant avers that plaintiff has not alleged, nor has she engaged in, any protected activity under any statute.

TENTH DEFENSE

The defendant made good faith efforts in consultation with the plaintiff to make reasonable accommodation and is therefore not liable for damages, pursuant to 42 U.S.C. § 1981a(a)(3).

ELEVENTH DEFENSE

Pending further discovery on the nature of plaintiff's claim, defendant reserves the right to plead the defense of undue hardship.

TWELFTH DEFENSE

Pending further discovery on the nature of plaintiff's claims, defendant reserves the right to plead the defense that plaintiff's requested accommodation would fundamentally alter the nature of the public service or program of the defendant.

THIRTEENTH DEFENSE

Plaintiff has failed to mitigate her damages.

FOURTEENTH DEFENSE

Any claim arising out of acts occurring prior to July 23, 1995 is barred insofar as it is brought pursuant to the ADA for plaintiff's failure to timely file a charge with the EEOC.

FIFTEENTH DEFENSE

Any claim arising out of acts occurring prior to January 13, 1995 is barred by the statute of limitations.

SIXTEENTH DEFENSE

Plaintiff is not entitled to liquidated damages on her claim under the FMLA as the defendant acted in good faith at all times.

/s/ Gary C. Smith
Gary C. Smith

/s/ Lisa Huggins
Lisa Huggins

OF COUNSEL:

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Attorneys for Defendant

[Filed Aug. 7, 1997]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

PATRICIA GARRETT,	)	
	)	
Plaintiff,	)	
	)	**CV-97-AR-0092-S**
v.	)	
	)	
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA IN BIRMINGHAM,	)	
	)	
Defendant.	)	

AMENDED COMPLAINT

I. INTRODUCTION

This complaint alleges violations of the Americans with Disabilities Act ("ADA"), Titles I, II and IV, the Rehabilitation Act of 1973, Section 504, and the Family Medical Leave Act ("FMLA"). Plaintiff alleges that Defendant discriminated and retaliated against her based on her disability and in failing to restore her to her prior position or to a similar position upon her return to work from family medical leave. This action seeks both equitable relief and damages.

II. JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201 and 2202, 42 U.S.C. § 2000e *et seq.*, 29 U.S.C. § 794 et seq., 42 U.S.C. § 12117, 42 U.S.C.

§§ 12133, and 42 U.S.C. § 12203. Venue is proper pursuant to 28 U.S.C. § 1391.

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. § 12117 and 12203 and Title VII of the "Civil Rights Act of 1964", as amended, 42 U.S.C. § 2000e et seq., and as amended by the "Civil Rights Act of 1991", 42 U.S.C. § 1981a. Plaintiff timely filed her charge of discrimination within 180 days of occurrence of the last discriminatory act. Plaintiff also timely filed this Complaint within ninety (90) days of the receipt of a Notice of Right to Sue issued by the EEOC and the Department of Justice. Title II of the ADA as well as Section 504 of the Rehabilitation Act and the Family Medical Leave Act do not require administrative exhaustion.

III. PARTIES

3. Plaintiff, Patricia Garrett, is a female citizen of the United States and a resident of the State of Alabama. On August 27, 1994, Ms. Garrett was diagnosed with breast cancer. Within the week, Ms. Garrett began treatment for the disease, undergoing a lumpectomy followed by radiation and chemotherapy which lasted through June 1995. Plaintiff's condition substantially limits her ability to, inter alia, sleep, care for herself and work. Consequently, Plaintiff is a person with a disability in that she has a physical impairment which substantially limits one or more of her major life activities. Plaintiff is also perceived as having a disability which substantially limits her ability to work and has a history of such disability. 42 U.S.C. § 12102, 42 U.S.C. § 12131, 29 U.S.C. § 706. Ms. Garrett has a serious health condition and has been employed with defendant for at least twelve months and had requested authorized leave in compliance with the certification requirements of her employer. Consequently, she is an eligible employee, as defined by the Family Medical Leave Act.

4. Defendant, The Board of Trustees of the University of Alabama in Birmingham (hereinafter "UAB Hospital") is an employer pursuant to 42 U.S.C. § 12111(5) and 29 U.S.C. § 2611, and is a public entity in accordance with 42 U.S.C. § 12131. Defendant is also a recipient of federal financial assistance.

IV. FACTUAL ALLEGATIONS

5. The Defendant has intentionally, and with malice or reckless indifference discriminated and retaliated, on the basis of Plaintiff's disability, against Plaintiff with respect to discharge, medical leave, compensation, job assignments, and other terms, conditions and privileges of employment.

6. Ms. Garrett was hired by defendant in 1977 as a Registered Nurse. In 1986, Ms. Garrett began working in the emergency room while working on her Masters in Nursing. As a result of her advanced education and good job performance, Ms. Garrett began to receive administrative promotions, and in June 1992, Ms. Garrett was awarded the position of Director of OB/Gyn/Neonatal Services which included managing Cooper Green's Perinatal Division.

7. On September 5, 1994, Ms. Garrett was diagnosed with breast cancer. Within a week Ms. Garrett underwent a lumpectomy and in October 1994 began radiation treatment, followed by chemotherapy in January 1995.

8. During the radiation treatment for her disability, Ms. Garrett preferred to work full-time and retain all her normal duties. She communicated this preference verbally, and in writing, to her supervisor, Sabrina Shannon. However, throughout the fall of 1994, Ms. Shannon, consistently encouraged Ms. Garrett to take leave due to plaintiff's medical condition, and Ms. Garrett became fearful about her job security as she had heard that Ms. Shannon tended to get rid of employees with "flaws". In fact, on the agenda memo dated January 5, 1995, Ms. Garrett's position was listed as "being

recruited"; however, she was later told by Ms. Shannon that this was a typographical error.

9. In January 1995, Ms. Garrett began undergoing chemotherapy. During this time, Ms. Garrett applied for intermittent leave under the FMLA. Also during the winter of 1994/1995, Ms. Shannon repeatedly threatened to transfer to Ms. Garrett to a less demanding position due to plaintiff's medical condition, despite Ms. Garrett's verbal and written statements that she was able to perform her position with or without reasonable accommodation.

10. In March 1995, after a number of negative comments regarding her illness by Ms. Shannon and the affects these comments and her illness had on her, Ms. Garrett took the Family Medical Leave offered by defendant for the remainder of her chemotherapy. Ms. Garrett took Family Medical Leave from approximately March 1, 1995 - July 10, 1995, the four months guaranteed by defendant's employee handbook and Family Medical Leave materials.

11. Upon her return from family medical leave, Ms. Garrett met with Ms. Shannon and Anne Ward from UAB personnel. At that meeting, it was decided that Ms. Garrett would continue in her position as Director of OB/Gyn/Neonatal Services. However, approximately a week later, Ms. Shannon told Ms. Garrett that she would either have to quit or transfer to another position, despite the fact that there were no other comparable positions in status or pay or else.

12. Facing termination, Ms. Garrett was forced to apply for a transfer although she desired to retain her prior position. Ms. Garrett was ultimately transferred to the position of Nurse Manager at the Mary Lewis Convalescence Home, a position which was a lower position and approximately a $13,000.00 decrease in salary.

13. Ms. Garrett was terminated as a result of her disability, and in retaliation for requesting and utilizing accommodations afforded by the ADA and Rehabilitation Act.

14. As a result of Defendant's action, Ms. Garrett has suffered extreme harm, including, but not limited to, loss of employment opportunities, denial of wages, compensation and other benefits and conditions of employment. Additionally, Ms. Garrett has suffered injury including pain, humiliation, mental anguish and suffering, and loss of enjoyment of life.

V. CAUSES OF ACTION - THE AMERICANS WITH DISABILITIES ACT, TITLES I, II AND IV, (RETALIATION), THE REHABILITATION ACT OF 1973, SECTION 504.

15. Plaintiff realleges and incorporates by reference paragraphs 1 through 14 above with the same force and effect as if fully set out in specific detail hereinbelow.

16. As stated, Plaintiff is a person with a disability, has a history of disability and is perceived as disabled pursuant to 42 U.S.C. § 12102, 12131 and 12203 and 29 U.S.C. § 706. Defendant is an employer in accordance with 42 U.S.C. § 12111(5), is a public entity in accordance with 42 U.S.C. § 12131 and receives federal financial assistance.

17. Despite Plaintiff's disability, with or without reasonable accommodation, she is able to perform the essential functions of her position as Director of OB/Gyn/Neonatal Services, as well as several other positions within UAB Hospital. Plaintiff meets the definition of "a qualified individual with a disability" pursuant to 42 U.S.C. § 12111(8), 29 U.S.C. § 794 and 42 U.S.C. § 12131.

18. Defendant, by its actions, has intentionally, maliciously and with reckless indifference discriminated against Ms. Garrett because of her disability with regard to her termination/demotion, employee compensation, benefits, and

other terms and conditions of employment. 42 U.S.C. § 12112, 29 U.S.C. § 794 and 42 U.S.C. § 12132.

19. Defendant has limited and classified Ms. Garrett in a manner which adversely affects her opportunities, income and status because of her disability.

20. Furthermore, Defendant has failed to accommodate Ms. Garrett, including allowing her to return to work, work with intermittent leave or transferring her to a comparable position in both salary and status.

21. Moreover, Defendant has retaliated against Ms. Garrett in response to her request for reasonable accommodations and exercising any reasonable accommodations provided by law. 42 U.S.C. § 12203.

22. Restoring Ms. Garrett to her former position or an equivalent job would not have caused substantial or grievous economic injury to the operations of the Defendant.

VI. THE FAMILY MEDICAL LEAVE ACT

23. Plaintiff realleges and incorporates by reference paragraphs 1-22 above with the same force and effect as if fully set out in specific detail hereinbelow.

24. As stated, plaintiff is a person with a disability and serious health condition pursuant to 29 U.S.C. § 2611. Ms. Garrett had been employed with defendants for at least 12 months and requested authorized leave in compliance with 29 U.S.C. § 2613 and the certification requirements of her employer. Defendant is an employer in accordance with 42 U.S.C. § 2611.

25. Defendant violated the Family Medical Leave Act, 29 U.S.C. § 2614, inter alia, with regards to restoring plaintiff to the position she held before she requested authorized leave, or an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

26. Defendant intentionally, maliciously and with reckless indifference denied Ms. Garrett restoration to the position she occupied before she requested authorized leave under the Family Medical Leave Act.

27. Restoring Ms. Garrett to her former position or an equivalent job would not have caused substantial or grievous economic injury to the operations of the defendant.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant including the action taken against plaintiff by defendant are violative of Plaintiff's rights as secured by the Americans with Disabilities Act, Titles I, II and IV, 42 U.S.C. § 12101, et seq., the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 and the Family Medical Leave Act, 29 U.S.C. § 2611 et seq.

2. Grant Plaintiff a permanent injunction enjoining the Defendant, its agents, successors, employees, attorneys and those acting in concert with the Defendant, and at the Defendant's request, from continuing to violate Plaintiff's rights as well as others who are similarly-situated pursuant to the Americans with Disabilities Act, Titles I, II and IV, the Rehabilitation Act of 1973, Section 504 and the Family Medical Leave Act, 29 U.S.C. § 2611 et seq.

3. Enter an Order awarding the Plaintiff damages including backpay, frontpay, nominal, liquidated, compensatory and punitive damages.

4. Award Plaintiff reasonable costs, attorney's fees and expenses.

5. Award such other relief and benefits as the cause of justice may require.

Respectfully submitted,

/s/ Sandra B. Reiss
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PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY.

/s/ Sandra B. Reiss
OF COUNSEL

IN THE SUPREME COURT

OF THE UNITED STATES

[Caption Omitted in Printing]

Order Granting Petition for a Writ of Certiorari Limited to Question 1 Presented by the Petition entered on April 17, 2000.

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